



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

IN THE MATTER OF THE PETITION OF)
HARVARDNET, INC. FOR APPROVAL OF A)
CREDIT FACILITY)

ORDER OF APPROVAL

DOCKET NO.: TF00030181

Weidenbaum & Harari, by Jack Harari, Esq., Tenafly, New Jersey, for HarvardNet, Inc.

Fred S. Grygiel, Chief Economist, Mark C. Beyer, Manager, Leo M. Lim, Supervising Accountant, and Julie Huff, Accountant II, Office of the Economist, on behalf of the Staff of the Board of Public Utilities

BY THE BOARD:

HarvardNet, Inc. ("HarvardNet" or "Petitioner"), a Delaware corporation and public utility subject to the jurisdiction of the Board of Public Utilities of the State of New Jersey ("Board"), filed a petition on March 30, 2000, pursuant to N.J.S.A. 48:3-7 and 48:3-9, requesting authority for HarvardNet to: (1) enter into a Credit Agreement (Secured Credit Facility); and (2) pledge all of its assets as security. On July 28, 2000, HarvardNet filed a motion for a Protective Order to limit the availability of information contained in Exhibits 1, 2, 3 and 4 attached to responses to the Staff Data Request dated April 14, 2000, which HarvardNet asserted contained sensitive and strategic information used for internal planning and business purposes which, if revealed, could be used by competitors against HarvardNet in the marketplace. These Exhibits contain, respectively, the terms of the Credit Facility, the schedule of the use of Credit Facility proceeds, the Board of Directors Resolution approving the terms of the Credit Facility, and HarvardNet's balance sheet and income statement for the twelve months ending December 31, 1999.

Petitioner is authorized to provide resold and facilities-based local exchange and intrastate toll services in the State of New Jersey pursuant to the Board's Order of Approval issued on August 18, 1999 in Docket No. TE99040243.

The Secured Credit Facility is comprised of two tranches: Tranche A is \$80 million and will be used for the purchase of networking hardware; and Tranche B is \$40 million and will be used for costs associated with the network installation and integration of networking hardware. The Secured Credit Facility will mature six years after the closing date.

By letter dated July 12, 2000, the New Jersey Division of the Ratepayers Advocate (Advocate), filed comments on this matter, and recommended that the Board decline to grant the petition as presently filed "until further review allows it to conclude that the public interest of HarvardNet's future customer base in New Jersey will be served as a result of the proposed debt." The Advocate espoused this position because, in response to its interrogatories, HarvardNet advised that it had not specifically earmarked an amount of the loan proceeds for New Jersey. The Advocate therefore concluded that the "specific identifiable benefit to the public interest in New Jersey is ambiguous". We disagree. The Petitioner has indicated, both in its petition and in response to staff questions, that the proceeds of the Secured Credit Facility will be used to purchase networking hardware and to finance the cost associated with network installation and integration of networking hardware. The petition indicates that expansion of the Petitioner's operations through the greater access to capital provided by the Credit Facility will benefit New Jersey consumers as well as, presumably, customers outside of New Jersey. Because today's telecommunications hardware and software can be located outside of the State and serve customers within the State, and because HarvardNet is not presently serving any customers in New Jersey and its future customer base in the State is not presently known, the Board is hard-pressed to conclude that the purpose of the Credit Facility should not be approved. We accept the Petitioner's unambiguous assertion that the proceeds of the Credit Facility will be used to expand and develop its network and its operations, and we agree that this is a lawful objective that will, if met, ultimately benefit New Jersey customers and citizens alike by promoting competition for telecommunications services in New Jersey, and by encouraging investment within the State.

With regard to the Petitioner's motion for a Protective Order with respect to Exhibits 1, 2, 3 and 4 attached to HarvardNet's responses to Staff's Data Request letter of April 18, 2000, the Board FINDS that the Petitioner has shown good cause that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial information be kept under seal.

Accordingly, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, being satisfied with the action proposed to be taken by Petitioner as indicated above and finding that the transaction is to be made in accordance with law and is not contrary to the public interest, and approving the purposes thereof, HEREBY ORDERS that HarvardNet, Inc. is HEREBY AUTHORIZED to participate in financing arrangements under the credit facility described herein.

This Order is issued subject to the following Provisions:

1. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.
2. Petitioner shall semiannually file statements for the amounts and use of the credit facilities pursuant to N.J.A.C. 14:1-5.9(b).

3. This Order shall not affect, or in any way limit the exercise of the authority of this Board, or of the State, in any future petitions or in any proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters, affecting the Petitioner.

DATED: September 15, 2000

BOARD OF PUBLIC UTILITIES
BY:

[SIGNED]
HERBERT H. TATE
PRESIDENT

[SIGNED]
CARMEN J. ARMENTI
COMMISSIONER

ATTEST:

[SIGNED]
FRANCES L. SMITH
SECRETARY

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